

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ADRIENNE HANKINS, as Co-
administrator, etc.,

Plaintiff and Appellant,

v.

ASBESTOS DEFENDANTS (BHC),

Defendants;

JUANITA REID,

Real Party in Interest and Respondent.

A123687

(San Francisco County
Super. Ct. No. 303486)

Adrienne Hankins, as the co-administrator of the estate of Betty Quinn and as the personal representative of Betty's son, Anthony Hellums, appeals from the order distributing the settlement funds in the underlying asbestos litigation involving Betty's deceased husband, James Quinn. She contends that the court should have allocated 50 percent of the settlement proceeds to the estate of Betty Quinn on behalf of Hellums, the stepson of James, rather than allocating 80 percent of the settlement proceeds to James's daughter and wrongful death heir, Juanita Reid. We affirm.

I. FACTUAL BACKGROUND

Preliminarily, we note that Hankins has not provided a properly supported statement of facts in her opening brief nor has she designated an adequate record. The California Rules of Court require that litigants provide a summary of the significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C),

(2)(C); see *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 [failure to comply with the Rules of Court requiring summary of material facts supported by appropriate reference to the record may constitute waiver of error].) Hankins's status as a pro. per. litigant does not excuse her from the duty to comply with the rules. An appellant in propria persona is held to the same standard of conduct as that of an attorney on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

II. PROCEDURAL BACKGROUND

As far as we can determine from the limited record before us, James died August 1, 1998, of mesothelioma. Betty filed a wrongful death lawsuit against various asbestos defendants. Betty had five children from a prior relationship who were raised in the Quinn household. She died on October 7, 2003. Hellums is mentally incompetent, and lived with and was dependent on the Quinns before their deaths. The Quinns died intestate.

On May 13, 1999, Betty commenced the underlying wrongful death action against the asbestos defendants. On August 15, 2008, counsel for plaintiffs in that action, moved for an order determining the respective rights of James's heirs to the settlement funds in the action and for an order distributing the funds and any future net settlement funds from bankrupt defendants that had not yet settled, and those defendants that had not yet paid the agreed settlement sums. The court ordered that James's heirs were entitled to share in the distribution of the settlement funds, with 20 percent allocated to Betty's estate for loss of consortium and as a wrongful death heir and 80 percent allocated to Reid as a wrongful death heir. This appeal followed.

III. DISCUSSION

Relying on several out-of-state authorities, Hankins contends that Hellums, as a mentally incompetent adult dependent of the Quinns and stepson of James, was entitled to share in the settlement proceeds as a wrongful death heir. On the record before us, we cannot conclude that the trial court erred in its allocation of the settlement funds.

In California, wrongful death actions are governed by statute, specifically, Code of Civil Procedure¹ section 377.60. (*Corder v. Corder* (2007) 41 Cal.4th 644, 651 (*Corder*).) We are bound by the statute's provisions. (*Phraner v. Cote Mart, Inc.* (1997) 55 Cal.App.4th 166, 168-169.)

Section 377.60 sets forth a cause of action in favor of specified heirs of a person whose death is "caused by the wrongful act or neglect of another." The specified heirs include "(a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession. [¶] (b) [And w]hether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. . . ." (*Ibid.*)

"While each heir designated in section 377.60 has a personal and separate wrongful death cause of action, the actions are deemed joint, single and indivisible and must be joined together in one suit. [Citation.] Accordingly, 'the court or jury must compute the damages, if any, by considering the pecuniary damage suffered by all the heirs and return a verdict for *one sum*.' [Citations.] In view of the lump-sum nature of wrongful death awards, section 377.61 provides: 'The court shall determine the respective rights in an award of the persons entitled to assert the cause of action.' " (*Corder, supra*, 41 Cal.4th at p. 652, fn. omitted.)

Here, Hankins has failed to provide an adequate record to review her claim. While the clerk's transcript contains two declarations submitted in support of her requested allocation of the settlement funds, it lacks the presumably opposing declaration of Reid, and the declaration of Nancy T. Williams, counsel for plaintiff. It is well settled that an appellant must affirmatively show error by an adequate record. (*Erikson v. Sullivan* (1947) 81 Cal.App.2d 790, 791; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 628, pp. 704-706.) The clerk's transcript filed in this case, which excludes any opposing

¹ All subsequent statutory references are to the Code of Civil Procedure.

declarations and is thus not in compliance with the rules, is inadequate to demonstrate error.

We note nonetheless that the court, in ordering the allocation here, recognized that the only remaining parties entitled to share in the settlement proceeds were Reid and the estate of Betty, and that based on its review of the file and “all the supporting declarations from the heirs, the requested or suggested proposals as to disposition,” it ordered 80 percent of the funds to Reid and 20 percent to Betty’s estate. On the abbreviated record before us, we cannot conclude that the court erred in its decision.

IV. DISPOSITION

The order is affirmed.

RIVERA, J.

We concur:

REARDON, Acting P.J.

SEPULVEDA, J.